



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 660

[Docket No. 201204-0325]

RIN 0648-BL44

### **Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; 2021-2022 Biennial Specifications and Management Measures; Inseason Adjustments**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures.

**SUMMARY:** This final rule announces routine inseason adjustments to the harvest limits for incidental Pacific halibut retention in the sablefish primary fishery. This action decreases the incidental Pacific halibut catch limit to ensure equitable harvest opportunities without exceeding the harvest limit.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Keeley Kent, phone: (206) 526-4655) or e-mail: [keeley.kent@noaa.gov](mailto:keeley.kent@noaa.gov).

#### **Electronic Access**

This rule is accessible via the Internet at the Office of the Federal Register website at <https://www.federalregister.gov>. Background information and documents are available at the Pacific Fishery Management Council's website at <http://www.pcouncil.org/>.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The Pacific Coast Groundfish Fishery Management Plan (PCGFMP), and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. The Pacific Fishery Management Council (Council) develops groundfish harvest specifications and management measures for two-year periods (*i.e.*, a biennium). NMFS published the final rule to implement harvest specifications and management measures for the 2021-2022 biennium for most species managed under the PCGFMP on December 11, 2020, (85 FR 79880). NMFS also published a correction (85 FR 86853, December 31, 2020), and a correcting amendment (86 FR 14379, March 16, 2021) to implement the Council's recommendations for the 2021-2022 harvest specifications and management measures.

In general, the management measures set at the start of the biennial harvest specifications cycle help the various sectors of the fishery attain, but not exceed, the catch limits for each stock. The Council, in coordination with Pacific Coast Treaty Indian Tribes and the states of Washington, Oregon, and California, recommends adjustments to the management measures during the fishing year to achieve this goal.

At its March 8-14, 2022 meeting, the Council recommended decreasing the amount of Pacific halibut that vessels in the sablefish primary fishery north of Point Chehalis, WA, may retain incidentally to ensure that catch of Pacific halibut stays within its annual allocation. Pacific Coast groundfish fisheries are managed using harvest specifications or limits (*e.g.*, overfishing limits [OFL], acceptable biological catch [ABC], annual catch limits [ACL] and harvest guidelines [HG]) recommended biennially by the Council and based on the best scientific information available at that time (50 CFR 660.60(b)). During development of the harvest specifications, the Council also

recommends management measures (*e.g.*, trip limits, area closures, and bag limits) that are meant to mitigate catch so as not to exceed the harvest specifications. The harvest specifications and mitigation measures developed for the 2021-2022 biennium used data through the 2019 fishing year. Each of the adjustments to management measures discussed below are based on updated fisheries information that was unavailable when the analysis for the current harvest specifications was completed. As new fisheries data becomes available, adjustments to management measures are projected so as to help harvesters achieve but not exceed the harvest limits.

Pacific halibut is generally a prohibited species for vessels fishing in Pacific Coast groundfish fisheries, unless explicitly allowed in groundfish regulations. The Council developed a Catch Sharing Plan for the International Pacific Halibut Commission (IPHC) Regulatory Area 2A, as provided for in the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773-773k) (Halibut Act), to allocate the Area 2A annual catch limit for Pacific halibut among fisheries off Washington, Oregon, and California. The IPHC annually sets allocations for the various IPHC regulatory areas, including Area 2A and NMFS implements these allocations for fishing in U.S. waters pursuant to the Halibut Act. NMFS also annually implements management measures and approves changes to the Catch Sharing Plan for Area 2A.

Under the Catch Sharing Plan, the sablefish primary fishery north of Point Chehalis, WA (46°53.30' N. lat.) is allocated a portion of the Washington recreational allocation, which varies via a catch limit-dependent formula, as described in the Catch Sharing Plan and in regulations at 50 CFR 300.63(b)(3).

The sablefish primary fishery season is open from April 1 to October 31, though the fishery may close for individual participants prior to October 31 once they reach the cumulative limit associated with their tier assignment(s) for the primary fishery. Regulations at § 660.231(b)(3)(iv) allow vessels fishing in the sablefish primary fishery

with a permit from the IPHC to retain Pacific halibut up to a set landing limit, which may be reviewed and modified throughout the sablefish primary fishery season to allow for attainment, but not exceedance of the Pacific halibut allocation. The objectives for the annual landing restrictions are to allow for incidental Pacific halibut catch and attain the Pacific halibut allocation, at about the same time the sablefish primary season ends (October 31), and to ensure an equitable sharing of the Pacific halibut landings among fishers.

On March 7, 2022, NMFS implemented a 2022 Area 2A catch limit of 1,490,000 pounds (lb) (675.9 metric tons (mt)) (87 FR 12604). As specified by the Catch Sharing Plan, since the 2022 Area 2A catch limit is less than 1.5 million pounds (680.4 mt), the incidental halibut limit for the sablefish primary fishery's allocation is 50,000 lb (22.7 mt) (87 FR 12604, March 7, 2022). In 2021, due to economic uncertainty, harvest during the regular sablefish primary fishery season was lower than predicted. As a result, at the September 2021 Council meeting, the Council recommended, and NMFS implemented, an emergency rule to extend the sablefish primary season, normally scheduled to end on October 31, until December 31, 2021 (86 FR 59873, October 29, 2021). Also, as part of that emergency rule, the incidental Pacific halibut retention allowance continued until the close of the Pacific halibut season on December 7, 2021. The 2021 season concluded with 98.7 percent of the 70,000 lb (31.8 mt) allowance for Pacific halibut landed. The effects of economic uncertainty resulting from the COVID-19 pandemic on sablefish primary fishery harvest are expected to be lessened in 2022, compared to 2021. If fishing patterns return to more typical seasonal efforts in 2022, the incidental Pacific halibut retention limit in place in 2021 may be too high, and harvest of Pacific halibut may accrue too quickly to allow retention throughout the entire sablefish primary season, which ends on October 31, 2022. In addition, the incidental limit for Pacific halibut is 20,000 lb less than in 2021, at 50,000 lb. The most recent year with a 50,000 lb limit was

2018, and in that year 87 percent of the allocation was harvested. From 2019-2021, the 70,000 lb limit was between 90 and 113 percent attained each year. Therefore, at the March 2022 virtual meeting, the Council recommended a reduction in Pacific halibut retention allowance early in the 2022 sablefish primary fishery season to discourage targeted fishing while allowing small incidental catches through the end of the season on October 31.

The Council recommended, and NMFS is revising the incidental Pacific halibut retention regulations at § 660.231(b)(3)(iv) to decrease the incidental Pacific halibut catch limit to enable some incidental catch without exceeding the harvest limit. The limit will be reduced from 225 lb (102 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio, to 150 lb (68 kg) dressed weight of halibut for every 1,000 lb (454 kg) dressed weight of sablefish landed, and up to two halibut in excess of the ratio. This decrease is expected to allow opportunity for total catch of Pacific halibut to attain, but not exceed, the 2022 allocation for the sablefish primary fishery north of Point Chehalis, WA (50,000 lb or 22.7 mt).

### **Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best scientific information available, consistent with the PCGFMP and its implementing regulations.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection by contacting Keeley Kent in NMFS' West Coast Region (see **FOR FURTHER INFORMATION CONTACT**, above), or view at the NMFS West Coast Groundfish website: <https://www.fisheries.noaa.gov/species/west-coast-groundfish>.

Pursuant to 5 U.S.C. 553(b), NMFS finds good cause to waive prior public notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest. The adjustments to management measures in this document affect commercial fisheries off the coast of Washington. No aspect of this action is controversial, and changes of this nature were anticipated in the final rule for the 2021-2022 harvest specifications and management measures, which was published on December 11, 2020 (85 FR 79880). Accordingly, for the reasons stated below, NMFS finds good cause to waive prior notice and comment.

At its March 2022 meeting, the Council recommended the decrease to the incidental Pacific halibut retention limit for vessels fishing in the sablefish primary fishery north of Point Chehalis. The sablefish primary fishery opened on April 1. The Council recommends this precautionary reduction be implemented as soon as possible, early in the season, in an effort to prolong the amount of time Pacific halibut may be retained in the sablefish primary fishery north of Point Chehalis.

Delaying implementation to allow for public comment would make it more likely for the sablefish primary fishery north of Point Chehalis to exceed its 2022 allocation of Pacific halibut before the end of the sablefish primary fishery season. Therefore, providing a comment period for this action could limit the equitable benefits to the fishery, and the vessels that participate in the fishery, as they rely on the Pacific halibut retention allowance throughout the entire season and could result in a greater risk of exceeding the Pacific halibut harvest allocation.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this rule and none has been prepared.

Therefore, the NMFS finds reason to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(1) so that this final rule may become effective upon publication in the **Federal Register**. The adjustments to management measures in this document affect commercial fisheries by decreasing the incidental halibut retention limit in the sablefish primary fishery north of Point Chehalis, WA. This adjustment was requested by the Council's advisory bodies, as well as members of industry during the Council's March 2022 meeting, and recommended unanimously by the Council. No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established through a notice and comment rulemaking for 2021-2022 (85 FR 79880, December 11, 2020).

#### **List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, and Indian Fisheries.

Dated: May 4, 2022.

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Jennifer M. Wallace,  
Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

#### **PART 660—FISHERIES OFF WEST COAST STATES**

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.231, revise paragraph (b)(3)(iv) to read as follows:

**§ 660.231 Limited entry fixed gear sablefish primary fishery.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(iv) Incidental Pacific halibut retention north of Pt. Chehalis, WA (46°53.30' N lat.). From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30' N lat.) may possess and land up to 150 lbs (68 kg) dressed weight of Pacific halibut for every 1,000 lbs (454 kg) dressed weight of sablefish landed, and up to two additional Pacific halibut in excess of the 150-lbs-per-1,000-pound limit per landing. “Dressed” Pacific halibut in this area means halibut landed eviscerated with their heads on. Pacific halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

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[FR Doc. 2022-09902 Filed: 5/6/2022 8:45 am; Publication Date: 5/9/2022]